

Proceeding: IN THE MATER OF ASSESSMENT AND COLLECTION OF REGULATORY FE ☒ Record 1 of 1

Applicant Name: John Maclean

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EX PARTE OR LATE FILED

Lawfirm Name:

Contact Name: applicant\_name

Contact Email:

Address Line 1: 2 M.I.K., Jr., Dr.

Address Line 2: Suite 356-East

City: Atlanta

State: GA ☒

Zip Code: 30334 Postal Code:

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
Federal-State Joint Board on )  
Universal Service )

FCC Docket No. 96-45  
AAD/USB File No. 98-36

**Comment of Consumers' Utility Counsel Division,  
Office of the Governor of Georgia in Support of  
The Combined Petition for Reconsideration of  
The Pennsylvania Public Utility Commission**

**1. INTRODUCTION**

Pursuant to FCC Public Notice DA 98-293 released on February 13, 1998, the Consumers' Utility Counsel Division, Office of the Governor of Georgia (CUCD) submits these comments in support of the Combined Petition for Reconsideration of the Pennsylvania Public Utility Commission (PaPUC Combined Petition).

Pursuant to O.C.G.A. § 46-10-4(a), the Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs ("CUCD"), by and through its director, is entitled to appear on behalf of the residential and small business consumers of Georgia in proceedings before the Georgia Public Service Commission (the Commission), the Federal Communications Commission, federal and state courts that may involve or affect rates for service or services of utilities. CUCD and its director have a statutory mandate and obligation, separate and distinct from that of the Commission, to represent the residential and small business ratepayers in Georgia with respect to such matters.

**II. BACKGROUND**

1. On January 2, 1998, the Commission's Common Carrier Bureau (CCB or Bureau) issued a Memorandum Opinion and Order (Pennsylvania Decision) denying the PaPUC's request for a waiver from the definition of "rural area" contained in Section 54.5 of the Commission's rules. The PaPUC submitted a PaPUC Combined Petition urging the CCB to reconsider that prior determination and grant alternative relief.

2. Section 254(b)(2) of the TA-96 generally requires that the cost for

telecommunications be just, reasonable, and affordable. Sections 254(b)(2) and (b)(3) of the TA-96 also require that services be provided to all regions of the Nation and that services be provided to rural areas at a level of quality and at a price comparable to that provided for similar services in urban areas.

3. Section 254(h)(1)(A) of the Telecommunications Act of 1934, as amended, requires the Commission to adopt a definition of "rural area" to determine the location of health care providers eligible for universal service support and to determine the "comparable rural areas" used to calculate the credit or reimbursement provided to a telecommunications carrier that provides telecommunications services to health care providers at reduced cost. The discount for health care providers can be secured **only** if the health care provider is located in a rural area. Section 254(h)(1)(B) provides a discount for schools and libraries although there is an additional discount for schools and libraries in rural areas. Thus, the "rural area" question also impacts schools and libraries.

4. The trigger for the discounts is whether the rural area meets the FCC's definition. The FCC's definition relies upon the Office of Management and Budget's (OMB) list of Metropolitan Statistical Areas (MSAs), and census blocks or tracts in metropolitan counties identified by the Goldsmith Modification (the OMB-Goldsmith definition). **In the absence of a waiver from that definition, a rural county cannot acquire the rural health care discount nor the additional discount for schools and libraries.**

5. In 1997, the PaPUC submitted a request for a waiver from the OMB-Goldsmith definition on behalf of nine Pennsylvania counties. The PaPUC request rested on, among other things:

- a) a significantly lower primary care physician-to-population ratio,
- b) a significantly higher proportion of residents living within designated areas of medical underservice, and
- c) significantly fewer hospitals and hospital beds.

6. The PaPUC bolstered the waiver request with a showing that the cost to the federal universal service program was minuscule. The cost of adding the affected 46 health care providers in the nine rural counties would only add an estimated \$475,087 (or less than 2/10 of one percent of the \$400 million allocated for the health care program). The PaPUC further bolstered the waiver request by showing that the cost to include the 317 schools in the nine rural counties adds only \$544,555 (or less than 3/100 of one percent of the \$2.25 billion allocated for schools and libraries).

### III. THE CONSUMERS' UTILITY

#### COUNSEL'S POSITION

7. CUCD supports the PaPUC Combined Petition because it contains new and relevant supplemental evidence, not reasonably discoverable at the time of the initial pleadings, sufficient to warrant reconsideration under the law and the Commission's regulations. CUCD is particularly concerned about the disproportionate impact that denying the PaPUC Combined Petition will have on states east of the Mississippi and the

impact on Texas, Louisiana and Missouri west of the Mississippi. CUCD believes that this constitutes new and relevant supplemental evidence substantially likely to affect the implementation of Sections 254(b) and 254(h) of the TA-96.

Since Georgia is the largest state east of the Mississippi, and one of the most rural, CUCD is most concerned that rural Georgians not be slighted in health care delivery. There is already a crisis in providing rural healthcare that is both adequate and at a reasonable cost. Brightline definitions for the rural discount that do not allow for provable exceptions, simply compound the problem.

8.CUCD also files these comments in support of the PaPUC Combined Petition because Pennsylvania has shown new circumstances, developed in more detail below, demonstrating that the FCC's Pennsylvania Decision never explained in detail what evidence the states must show to establish the "special circumstances" necessary to securing a waiver from the OMB-Goldsmith definition. The FCC should reconsider and analyze the PaPUC's new evidence to remedy this lack of detail. Otherwise, the states will be unable to discern when, and under what circumstances, they could seek a waiver from the FCC's narrow definition of "rural areas" for purposes of the Telecommunications Act of 1996.

9.CUCD also supports the PaPUC Combined Petition because of the new claim, not capable of being raised before, that the Pennsylvania Decision and the FCC's current definition imposes an inadvertent, but very real, inequity and hardship on counties east of the Mississippi River. The initial PaPUC Combined Petition shows that 177 of 229 counties eligible for a waiver under the PaPUC Combined Petition are located east of the Mississippi. The PaPUC's initial filing also shows that 24 of the remaining 52 counties are concentrated in 3 states west of the Mississippi i.e., Texas, Louisiana and Missouri.

This disproportionate impact is underscored with in recent supplemental information filed by the PaPUC in support of the PaPUC Combined Petition. The Supplemental Information, attached to PAPUC's filing, shows that 235 of 325 counties eligible for a waiver as suggested by the PaPUC Combined Petition are located east of the Mississippi River and that 46 of the remaining 90 counties west of the Mississippi River are concentrated in Texas, Louisiana, and Missouri. CUCD does not believe that this disproportionate impact was intended by the Congress.

10.In particular, CUCD is concerned that 26 counties in Georgia could request a waiver from the FCC's definition and thereby secure the benefits intended for rural Georgians under the Telecommunications Act of 1996. In support of that position, CUCD has attached an **Appendix A** showing the number of counties in our state that could be eligible for a waiver if the FCC endorsed the proposal in the PaPUC Combined Petition. In addition, CUCD does not believe that this flexibility constitutes a national floodgate because the cost of providing the discounts to every county in every state that might be eligible under the four-part Pennsylvania test is only **4%** of the total \$2.5 billion budgeted for schools and libraries, and **4%** of the \$400,000,000 budgeted for rural health care. Finally, these claims are based on nationally available 1990 Census Bureau definitions and data.

11.CUCD further supports the PaPUC Combined Petition because the matter can

be simply remedied. CUCD supports the PaPUC claim that new evidence, not capable of being raised before, shows that the omissions, the absence of detail in the Pennsylvania Decision about what constitutes special circumstances, and the hardship and inequity suggested by the PaPUC Combined Petition and these comments can be remedied by simply granting the PaPUC Combined Petition. By endorsing the proposed four-part test for waiver requests under Section 251(h) of the Act, the FCC can avoid protracted litigation.

12.CUCD supports the PaPUC's proposed four-part test for guiding current and future requests for waivers from the OMB-Goldsmith definition. Under the test, a county would be expected to show:

- a) that a county is less than 50% urbanized as defined by the U.S. Census Bureau.
- b) Second, that each county contains no "central city" as defined by the US Census Bureau.
- c) Third, show the existence of prior commitments to the county, such as education or health care initiatives, based on the county's rural status.
- d) Finally, the county would have to provide other corroborating evidence that tended to establish that the county was different from an urban county.

States able to make these showings would be granted a waiver from the OMB-Goldsmith definition as a "modified non-urbanized" exception to the general definition. CUCD believes that this test should be adopted because it enhances predictability and not burdensome to administer.

13. Finally, CUCD believes that the nine counties in Pennsylvania meet the criteria of "modified non-urbanized" rural areas based on 1990 Census Bureau definitions and data. Each of the nine counties has a population that is less than 50% urbanized and no county possesses a central city. In addition, Pennsylvania has shown that it developed initiatives before the Act that focus on the challenges facing these rural counties. Each county contains school districts that do not meet the definition of urban school districts and the counties have designated health care shortage areas. Finally, Pennsylvania submitted corroborating evidence showing that these counties contain rural telcos as defined under the Act and that all nine rural counties pay higher T-1 rates, compared to urban counties, to obtain the basic and advanced telecommunications envisioned by the Act.

14.Finally, CUCD is very concerned about this proceeding because the CCB's decision here has profound impact on the 26 counties in Georgia that might be eligible to seek the same waiver that Pennsylvania seeks. CUCD believes that it could make a similar showing based on these criteria and that the disproportionate impact under the rigid definition developed by the FCC operates to the detriment of Georgians.

15.For these reasons, CUCD files these comments in support of the PaPUC Combined Petition. CUCD urges the FCC to grant reconsideration and provide Pennsylvania the relief requested using the four-part test as set forth by Pennsylvania. CUCD believes this result enhances regulatory predictability, provides the flexibility needed in the complex field of determining what is "rural" in America, and because it would be a useful guide to Georgia in regard to its similar concerns.

16. Of the 26 Georgia counties listed on **Appendix A**, two counties, Madison and Twiggs, have 100% of their area designated as rural by the 1990 Census. Five (5) counties are between 75 and 80 % rural, 3 between 80 and 90%, and 4 between 90 and 100%. As of 1994, 9 of the counties had no general hospitals and 13 counties only 1. None of these 26 counties possess a central city.<sup>1</sup>

17. CUCD also shows that under the Clinton Administration's *Comprehensive Electricity Competition Plan* the DOE and USDA have been tasked to analyze rural areas and the impact thereon of electric competition. If the FCC's definition of "rural" and that of DOE/USDA do not match, it would create an unexplainable inconsistency. Therefore, the FCC should provide for a more flexible approach in order to accommodate future concerns.

#### IV. CONCLUSION

CUCD urges the Commission to grant the PaPUC Combined Petition and use the non-binding waiver criteria set forth in the Petition to grant Pennsylvania the relief requested and to provide guidance to other states on what considerations would justify a waiver from the OMB-Goldsmith definition. CUCD believes that the absence of detail on what constitutes "special circumstances" in the Pennsylvania Decision, the hardship and inequity imposed on counties east of the Mississippi River under a rigid and inflexible application of the OMB-Goldsmith definition, the disproportionate impact on 3 states west of the Mississippi River, and the spirit and intent of Congress justify a waiver from the OMB-Goldsmith definition for Pennsylvania's 9 counties and Georgia's 26. Most importantly, CUCD supports the PaPUC Combined Petition because the claims and proposed test are extremely helpful in guiding Georgia's attempts to secure identical discounts for similarly-situated counties in Georgia.

Respectfully submitted,

Jim Hurt  
Director of Consumers' Utility Counsel Division

John H. Maclean  
Attorney  
APPENDIX A

COUNTIES IN GEORGIA AFFECTED USING THE PENNSYLVANIA TEST		
Tot. Pop. 1990	Urbanized Pop. 1990	% Urbanized

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<sup>1</sup>This information is from the 1990 Census and is compiled in The Georgia County Guide 15th ed; 1996.

Barrow	29,721	0	0%
Bartow County	55,911	1,811	3%
Bryan County	15,438	0	0%
Carroll County	71,422	0	0%
Cherokee County	90,204	33,218	37%
Coweta County	53,853	0	0%
Dade County	13,147	461	4%
Effingham County	25,687	0	0%
Fayette County	62,415	1,167	2%
Forsyth County	44,083	0	0%
Harris County	17,788	0	0%
Henry County	58,741	8,434	14%
Jones County	20,739	3,744	18%
Lee County	16,250	3,537	22%
McDuffie County	20,119	0	0%
Madison County	21,050	0	0%
Newton County	41,808	0	0%
Oconee County	17,618	846	5%
Paulding County	41,611	0	0%
Peach County	21,189	0	0%
Pickens County	14,432	0	0%
Rockdale County	54,091	22,091	41%
Spalding County	54,457	0	0%
Twiggs County	9,806	0	0%
Walker County	58,340	21,809	37%
Walton County	38,586	0	0%